IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Alberth, Jr. et al.	)
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For:	Method and Apparatus for Storing a Message for Playback during a User-Initiated Emergency Telephone Call from a Wireless Device	)
		)
Serial No.:	09/610,768	)
		)
Filed:	July 6, 2000	)
		)
Examiner:	Tran, T.	)
		)
Art Unit:	2684	)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

APPELLANTS' BRIEF

This brief is in furtherance of a NOTICE OF APPEAL filed, February 9, 2009.

Any fees required under § 41.20, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF Amended APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

I REAL PARTY IN INTEREST

II RELATED APPEALS AND INTERFERENCES

III STATUS OF CLAIMS

IV STATUS OF AMENDMENTS

V SUMMARY OF CLAIMED SUBJECT MATTER

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Motorola, Inc., a Delaware corporation.

II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

III. STATUS OF CLAIMS

A. Status of all claims in the proceeding

1. Clams rejected: 4, 12 and 17
2. Claims allowed: 1, 2, 5-10, 13-16, 18-24 and 26-30
3. Claims withdrawn from consideration but not canceled: none
4. Claims objected to: none
5. Claims canceled: 3, 11 and 25

B. Identification of claims being appealed

The claims on appeal are: 4, 12 and 17

IV. STATUS OF ANY AMENDMENTS AFTER FINAL

No amendments have been filed after final.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A first aspect of the present invention (claim 4), which is being appealed, pertains to a method of sending a message stored in memory (18) associated with a wireless device, the wireless device (10) including a microphone (22). The method includes initiating a call from the wireless device (page 10, lines 6-7). The microphone is then monitored for audio signals (page 10, lines 25-28). The stored message is then sent from the wireless device after a call is established if audio signals have not been detected being picked-up by the microphone of the wireless device (page 10, line 32 to page 11, line 2). If audio signals have been detected being picked-up by the microphone of the wireless device, the stored message is never sent from the wireless device in connection with the call initiated from the wireless device (page 10, lines 29-32).

A further aspect of the present invention (claim 12), which is being appealed, pertains to a method of sending a message stored in memory (18) associated with a wireless device (10), where the wireless device includes a microphone (22). The method includes initiating a call from the wireless device (page 10, lines 6-7). The microphone is then monitored for audio signals (page 10, lines 25-28). The stored message is then sent from the wireless device after a call is established (page 10, line 32 to page 11, line 2). The sending of the stored message is then terminated without resuming during the call initiated from the wireless device, when an audio signal is picked-up by a microphone of the wireless device (page 10, lines 29-32).

A still further aspect of the present invention (claim 17), which is being appealed, pertains to a method for sending a message from a wireless device (10), including a microphone (22). The method includes initiating a call from the wireless device (page 10, lines 6-7). Audio detected by the microphone is then stored upon initiating the call in a memory (18) associated with the wireless device (page 10, lines 25-28). Upon establishing the call, the audio that was stored is then sent upon initiating the call (page 10, line 32 to page 11, line 2) wherein sending the stored message is terminated if audio signals are detected via the microphone of the wireless device (page 10, lines 29-32).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 4, 12 and 17 have been improperly rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

VII. ARGUMENTS

A. Rejections under 35 U.S.C. 112

1. Whether claims 4, 12 and 17 have been improperly rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 12 and 17

The Examiner has rejected claims 4, 12 and 17, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, suggesting specific amendments as being necessary to address identified informalities, with respect to consistency concerns.

Regarding claims 4, 12 and 17, the applicants have reviewed the basis for the Examiner's position, and do not agree with the reasoning used to support the articulated objection. It would appear that the Examiner has objected to the claims as having language, which is not identical with language associated with specific embodiments described in the detailed description. In turn, the Examiner has sought to impose a restriction into the claims, based upon the nature of at least one of the specific exemplary embodiments. However, the embodiments in the detailed description do not define the scope of the claims, the language of the claims define the scope of the claims. The applicants believe that the Examiner has misconstrued the requirements of 35 U.S.C. §112, second paragraph, namely that there is no requirement that the claims be consistent with any particular embodiment being described in the detailed description to the degree that is being currently requested by the Examiner.

A specific detailed embodiment identifying by way of example, namely, the detection of user's voice signals, would appear to support and be consistent with the claimed detection of audio signals. In other words, voice signals are a usual and fair example of and a subset of audio signals, and consequently contrary to the Examiner's assertions are fully supportive and consistent with the specific claimed language. In fact, one skilled in the art would understand that the inventors had possession of the originally claimed subject matter, at the time the application was originally filed, and that the same was fully supported by way of the original detailed description.

More specifically, the Examiner has failed to identify a type of audio signal that would be inconsistent with a voice signal to a degree that, the embodiment making specific reference to a voice signal would not fairly represent and support the claiming of a detection of an audio signal, and/or has failed to support the assertion that a voice signal being generally understood to be a type of audio signal would therefore not be consistent with an audio signal, in the manner used in the claim.

Consequently, because the use of a specific example in the detailed description involving a detection of a user's voice signal is fully supportive, and consistent with the detection of the claimed audio signal, the alleged inconsistency which could be said to raise patentability concerns is not present, and therefore the basis for the rejection can not be supported.

In view of the above analysis, the applicants would assert, that the Examiner has failed to establish that the claims are inconsistent with the specification in a manner, so as to result in the claims being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicants would respectfully request that the Examiner's decision to finally reject the presently pending claims be overturned, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

The following is the text of the claims pending in the application, including all of the claims involved in this appeal:

1. A method for sending a message stored in memory associated with the wireless device, comprising:

a) initiating a call from the wireless device;

b) initiating a timer when the call is established; and

c) sending the stored message from the wireless device during the call, when a predetermined time has elapsed on the timer from when the call was established.

2. The method of claim 1, further comprising:

d) sending position data from the wireless device when the call is established.

3. (canceled)

4. A method of sending a message stored in memory associated with a wireless device, the wireless device including a microphone, the method comprising the steps of:

a) initiating a call from the wireless device;

b) monitoring the microphone for audio signals; and

c) sending the stored message from the wireless device after a call is established if audio signals have not been detected being picked-up by the microphone of the wireless device; and

d) never sending the stored message from the wireless device in connection with the call initiated from the wireless device, if audio signals have been detected being picked-up by the microphone of the wireless device.

5. A method of sending a message stored in memory associated with a wireless device, the wireless device including a microphone, the method comprising the steps of:

a) initiating a call from the wireless device;

b) monitoring the microphone for audio signals;

c) sending the stored message from the wireless device after a call is established; and

d) adding audio signals picked-up by the microphone of the wireless device into the stored message and sending the resultant combined signal.

6. A method of sending a message stored in memory associated with a wireless device, the wireless device including a microphone, the method comprising the steps of:

a) initiating a call from the wireless device to a base;

b) sending the stored message from the wireless device to the base after a call is established;

c) detecting a playback command received from the base, in response to the operator of the base depressing a keypad key; and

d) resending the stored message from the wireless device responsive to detecting the

command received from the base.

7. The method of claim 6, wherein step a) comprises

detecting actuation of a speed-dial key and initiating the call from the wireless device in response to detecting actuation of the speed-dial key.

8. The method of claim 5, and further including the step of storing an audio message picked-up from a microphone of the wireless device in a memory associated with the wireless device after initiating the call.

9. The method of claim 5, further including the step of storing a data message in a memory associated with the wireless device.

10. The method of claim 9, wherein the data message is part of a radio repertoire.

11. (canceled)

12. A method of sending a message stored in memory associated with a wireless device, the wireless device including a microphone, the method comprising the steps of:

a) initiating a call from the wireless device;

b) monitoring the microphone for audio signals;

c) sending the stored message from the wireless device after a call is established; and

d) terminating sending the stored message without resuming during the call initiated from the wireless device, when an audio signal is picked-up by a microphone of the wireless device.

13. The method of claim 1, further including terminating sending the stored message when a key of the wireless device is activated.

14. A method for sending a message from a wireless device, including a microphone, the method comprising the steps of:

a) initiating a call from the wireless device;

b) storing audio detected by the microphone upon initiating the call in a memory associated with the wireless device; and

c) upon establishing the call, sending the audio that was stored upon initiating the call.

15. The method of claim 14, further comprising:

d) sending position data from the wireless device once the call is established.

16. The method of claim 14, wherein step c) comprises the step of:

d) sending the stored message if voice signals are not detected via the microphone of the wireless device within a predetermined time after the call is established.

17. The method of claim 14, wherein step c) comprises the step of:

d) terminating sending the stored message if audio signals are detected via the microphone of the wireless device.

18. The method of claim 14, wherein step c) comprises the step of:

d) terminating sending the stored message when a key of the wireless device is activated.

19. The method of claim 14, further comprising:

d) resending the stored message from the wireless device when a command is detected on a downlink channel.

20. The method of claim 14, wherein step a) comprises the step of:

d) initiating a call from the wireless device by depressing a speed-dial key.

21. The method of claim 14, wherein step b) comprises the step of:

d) storing the message picked-up from a microphone of the wireless device in a memory associated with the wireless device.

22. The method of claim 14, wherein step b) comprises the step of:

d) if necessary, reallocating the memory to store the message.

23. A wireless device comprising:

a keypad;

a transceiver;

a memory, a message stored in the memory; and

a controller programmed to:

a) initiate a call from the wireless device in response to a predetermined key stroke;

b) transmit the stored message through the transceiver to a base when the call is established; and

c) retransmit the stored message through the transceiver when a playback command is received from a base through the transceiver, in response to an operator of the base depressing a keypad key.

24. The wireless device of claim 23, further comprising:

a geolocation receiver for determining position data for the device; and

the controller further programmed to:

d) transmit the position data through the transceiver when the call is established.

25. (canceled)

26. A wireless device comprising:

a keypad;

a transceiver;

a memory, a message stored in the memory; and

a controller programmed to:

a) initiate a call from the wireless device in response to a key stroke;

b) initiate a timer when the call is established; and

c) transmit the stored message through the transceiver during the call after a predetermined time has elapsed on the timer from when the call was established.

27. A wireless device comprising:

a keypad;

a transceiver;

a memory, a message stored in the memory; and

a controller programmed to:

a) initiate a call from the wireless device in response to a key stroke;

b) storing audio picked up by a microphone after initiating the call;

c) transmit the stored message through the transceiver to a base when the call is established; and

d) reallocate memory to store the audio picked up by the microphone after initiating the call.

28. The wireless device of claim 26 wherein the controller is further programmed to:

d) terminate transmission of the stored message when a voice signal is picked-up by a microphone of the wireless device.

29. The wireless device of claim 26 wherein the controller is further programmed to:

d) terminate transmission of the stored message when a key of the wireless device is activated.

30. A wireless device comprising:

a keypad;

a transducer;

a transceiver;

a memory, the memory storing a message; and

a controller programmed to:

a) initiate a call from the wireless device in response to a key stroke; and

b) combine the stored message with an audio signal from the transducer and transmit the combined signal simultaneously through the transceiver when the call is established.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None